

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WAYNE STEPHEN FALCIGLIA )  
Plaintiff, )  
vs. ) 06-cv-192E  
ERIE COUNTY PRISON et al., )  
Defendants )

## **MEMORANDUM ORDER**

On August 24, 2006, Plaintiff filed a motion for preliminary injunction and temporary restraining order, seeking an order requiring Defendants to provide him with his medically prescribed diabetic diet. (Doc. 4). A telephonic hearing on Plaintiff's motion was held before Magistrate Judge Baxter on September 8, 2006. (Doc. 5). Counsel for Defendant Erie County Prison attended the hearing. At the conclusion of the hearing, Magistrate Judge Baxter ruled that Plaintiff's motion for preliminary injunction and temporary restraining order was to be held in abeyance to allow defense counsel to check on whether a diabetic diet was available and/or whether one can be provided. (Doc. 5). On October 10, 2006, Magistrate Judge Baxter issued a Report and Recommendation. (Doc. 6) In her Report and Recommendation, Magistrate Judge Baxter explained that defense counsel had forwarded to the Court "documentary evidence that Erie County Prison offers diabetic menus and that Plaintiff has, in fact been receiving a high calorie diabetic diet." Magistrate Judge's Report and Recommendation, pp. 1-2. Based upon this evidence, the Magistrate Judge held that "Defendants have provided sufficient documentary evidence to demonstrate that Plaintiff has been receiving a high calorie diabetic diet, which is the ultimate relief sought by Plaintiff in his motion for preliminary injunction," and denied Plaintiff's

motion. Id. at p. 2. On October 19, 2006, Plaintiff filed an Objection to the Report and Recommendation. (Doc. 7).

It is this Court's responsibility to review *de novo* the pleadings and documents relevant to Plaintiff's motion and determine whether or not to adopt Magistrate Judge Baxter's report and recommendation that Plaintiff's motion be denied. This we cannot do currently because the Defendants never filed with the Court the "documentary evidence that Erie County Prison offers diabetic menus and that Plaintiff has, in fact been receiving a high calorie diabetic diet." Nor, apparently, did the defense supply Plaintiff with copies of this documentary evidence. See Plaintiff's Objection, p. 1.

AND NOW, this 16 <sup>th</sup> day of January, 2007, it is hereby ORDERED, ADJUDGED AND DECREED that on or before January 23, 2007, Defendants are to file with the Court the documentary evidence they submitted to Magistrate Judge Baxter in opposition to Plaintiff's motion for preliminary injunction and temporary restraining order and are to provide Plaintiff with copies of said documents.

It is further ORDERED, ADJUDGED AND DECREED that Plaintiff shall have until February 6, 2007 to file any additional objections he has to Magistrate Judge Baxter's Report and Recommendation.

  
Maurice B. Cohill, Jr.  
Senior District Court Judge